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From: General Secretariat of the Council

To: Delegations

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 1217/2009 as regards conversion of the Farm Accountancy Data Network into a Farm Sustainability Data Network

- Comments from the Spanish delegation

Delegations will find attached the comments of Spain to the questions asked by the Presidency concerning the legal basis and the drafting suggestions in relation to the above-mentioned proposal.

Report on the position of Spanish Delegation on the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 1217/2009 as regards conversion of the Farm Accountancy Data Network into a Farm Sustainability Data Network to the Presidency's drafting suggestions on parts of Article 1,2, 6 and 7 of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1217/2009 as regards conversion of the Farm Advisory Data Network into a Farm Sustainability Data Network (FSDN)

These issues were included in the Working Party on Financial Agricultural Questions (AGRIFIN) and stated in the agenda for the 7th of December 2022 as follows:

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1217/2009 as regards conversion of the Farm Accountancy Data Network into a Farm Sustainability Data Network doc. 10592/22 & 10592/22 ADD 1-2

This report is conducted with the final purpose of stating Spanish position for the issues involved.

- 1) Commented [A1]: To be further discussed - valid legal basis is a crucial issue related to the sentence *"Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,"***

Despite stated for further discussion we can advance the position of Spanish Delegation is that we do not see any impediment for this mention to Art 43.2 of the Treaty on the Functioning of the European Union where it says that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the common organization of agricultural markets provided for in Article 40(1) and the other provisions necessary for the pursuit of the objectives of the common agricultural policy (CAP) and the common fisheries policy.

The support of this position is because we consider FSDN as a tool to assess if CAP is being effective when trying to achieve its goals. The main reason of the change from FADN to FSDN is the new formulation of the CAP where aspects related to sustainability in any of its three parts economic, social and environmental are of the highest importance. According to this, the establishment of FSDN as one of the main (if not the main) tool for CAP evaluation should be considered as a provision necessary for the pursuit of the objectives of the common agricultural policy

2) Commented [A2]: Farm/holding is used inconsistently throughout the text – for a later stage

For harmonization and clarification purposes we suggest not to mention “farm” but to refer to “holding,” which is specifically defined in Article 2 in definitions, concretely in letter b).

3) Commented [A3]: Several ideas how to specify scope of the data collected and the purpose - to be further discussed

It is noticed the deletion of the sentence “2. *The data obtained pursuant to this Regulation shall contribute to the assessment of EU agriculture’s sustainability*” The position of Spanish Delegation is that it should be stated a reference to the CAP in the scope of the data collected and the purpose, so considering what was stated in the basic act 1217/2009, we would suggest the following proposal now in Article 1 for FSDN:

1. To meet the needs of the common agricultural policy, a Union farm sustainability data network ('FSDN') is set up for the collection of farm sustainability data. Apart from common agricultural policy, the thorough information collected enables its use for the assessment of any aspect related to agricultural sustainability.

4) Commented [A4]: There will be a new recital on data protection and

5) Commented [A5]: Will be redrafted and relevant Articles of the Regulation (EC) 223/2009 will be listed here

The position of Spanish Delegation for Commented [A4] and Commented [A5] is of no concern to this more detailed breakdown of the aspects of the regulations 2016/679, 2018/1725 and 223/2009, related to personal data and statistical confidentiality. We understand it can lead to a better understanding, however, as it is explained it will be redrafted, we would like to ask not detailing excessively if it could lead to requiring of amending FSDN basic act in the future if any of the regulations above mentioned are updated in the future.

As it is stated there will be a new draft, prior to further pronounce of the Spanish Delegation, we will have to see the draft.

6) Commented [A6]: Purpose of the definition for this Regulation to be explained further or changed to a farm manager

In agreement to a comment made by Sweden after the 12/10/2022 AGRIFIN meeting, and as it was stated for 16/11/2022 AGRIFIN meeting, the position of Spanish Delegation is that to be coherent with the terminology in IFS (regulation (EU) 2018/1091) the word “farmer” should be replaced by “manager”. It is because manager and not farmer, is what means the natural person responsible for the day-to-day management of an agricultural holding.

7) Commented [A7]: This is actually the link to IFS It has to be checked throughout the whole Regulation to avoid using of ‘agricultural holding’ (for a later stage)

This comment is related to the sentence: *b) ‘holding’ means a farm business, in accordance with its use in the context of Union agricultural surveys and censuses.*

The position of Spanish Delegation is of agreement with the specific mention to “*Union agricultural surveys and censuses*” with the purpose of harmonization. We also agree with the caution of not using agricultural holding then, as it would lead to redundancy. We have no concerns to the deletion of “*general*” prior to the word “*use.*”

8) Commented [A8]: Will be more concrete

This comment is related to the sentence: *(d) 'farm return' means the questionnaire filled in with the data of an agricultural holding according to the FSDN common methodology described in the relevant Union legislation and technical guidelines;*

The position of Spanish Delegation is of no concern to the addition made of the sentence” described *in the relevant Union legislation and technical guidelines.*” Despite we could consider it unnecessarily from a technical point of view we also understand it can provide with further information and clarification if the reader is not keen on the topic mentioned.

9) Commented [A9]: Definition of FSDN data has to be make more precise in the basic Regulation - to be further discussed

and

10) Commented [A10]: Will be unified throughout the text – for a later stage

These comments are related to the change in the “FSDN data” definition:

From:

(g) 'FSDN data' means economic, environmental and social farm level data relating to agricultural holdings derived from accounts, and/or from other data sources collected systematically and regularly;

To:

(g) 'FSDN data' means economic, environmental and social farm level data relating to agricultural holdings derived from accounts, and/or from other data sources such as statistical, environmental and administrative data sets.

The position of Spanish Delegation for Commented [A9] and Commented [A10] is of disagreement with the change. We do not agree with the deletion of “collected systematically and regularly” as the purpose of using various sources is exactly to use information collected systematically and regularly. When it comes to the addition of “such as statistical, environmental and administrative data sets” it wants to be stated the collection of statistical and administrative data about any aspect related to sustainability, so, we see misleading to add environmental specifically. In conclusion we suggest the following rephrasing:

(g) ‘FSDN data’ means economic, environmental and social farm level data relating to agricultural holdings derived from accounts, and/or from other data sources collected systematically and regularly; such as statistical and administrative data sets.

11) Commented [A11]: New Article for extension the protection (legal persons’ data will be treated the same way as natural persons’) will be drafted.

This comment is related to the change in the “FSDN data” definition:

From:

(i) ‘personal data’ means personal data as defined in Regulations (EU) 2016/679 and (EU) 2018/1725, however extending protection to the legitimate interests of farmers who are legal persons;

To:

(i) ‘personal data’ means personal data as defined in Article 4(1) of Regulations (EU) 2016/679 and in Article 3(1) of Regulation (EU) 2018/1725,

As explained in Commented [A4] and Commented [A5], the position of Spanish Delegation is of no concern to this more detailed breakdown of the aspects of the regulations 2016/679, 2018/1725, related to personal data. We understand it can lead to a better understanding, however, we all should bear in mind that according to the current proposal for “personal data” it could lead to requiring of amending FSDN basic act in the future if any of the regulations above mentioned are updated in the future.

When it comes to the legal persons, prior to further pronouncement of the Spanish Delegation, we will have to see the draft. Please notice the regulation solves the issue with the words “natural or legal person” to include both of them in the issues suggested. So, we would appreciate if it could be considered for simplification.

12) Commented [A12]: To be dealt with when discussing the Article 8

There is no change in the definition proposed for ‘farm ID’ which at least at the current time remains as follows:

(j) ‘farm ID’ means the unique identification number for an individual holding, with regards to processing of data under this Regulation;

However, we can expect it will be amended once Article 8 is revised. At the current time it is written as follows:

(14) Article 8 is replaced by the following:

‘Article 8

1. Each returning holding shall be the subject of an individual farm return and identified by a farm ID.

2. The data provided by each duly completed farm return shall be such that it is possible:

(a) to characterise the returning holding by reference to the main elements of its factors of production;

(b) to assess the income of the holding in its various forms;

(c) to assess the economic, environmental and social sustainability of the holding;

(d) to test, by means of on-the-spot checks, the veracity of the information given.

When it comes to farm ID’ and Article 8, prior to further pronouncement of the Spanish Delegation, we will have to see the draft.

13) Commented [A13]: New provision to be drafted covering:

- **Categories of personal data**
- **Specific purposes for which they may be processed**
- **The retention period**
- **Clear assignment of roles in terms of data protection (controller, joint controller, processor)**
- **Description of the IT tool**

This comment is related to the change in the “processing data” definition:

From:

(k) ‘processing data’ means any operation or set of operations which is performed on data of persons, according to Article 3(3) of Regulation (EU) 2018/1725;

To:

(k) ‘processing’ data’ means any operation or set of operations which is performed on data of persons as defined in Article 4 (2) of Regulation (EU) 2016/679, and in Article 3(3) of Regulation (EU) 2018/1725;

As explained in Commented [A4] and Commented [A5] and Commented [A11], the position of Spanish Delegation is of no concern to this more detailed breakdown of the aspects of the regulations 2016/679, 2018/1725, related in this case to processing data. We understand it can lead to a better understanding, however, we all should bear in mind that according to the current proposal for “processing data” it could lead to requiring of amending FSDN basic act in the future if any of the regulations above mentioned are updated in the future.

As it is stated there will be a new draft, prior to further pronounce of the Spanish Delegation, we will have to see the draft.

14) Commented [A14]: To be further discussed later

This comment is related to the change in the “anonymised data” definition:

From:

(n) ‘anonymised data’ means data based on primary data in a form which does not allow natural or legal persons to be identified directly or indirectly;

To:

(n) ‘anonymised data’ means data in a form which does not allow natural or legal persons to be identified directly or indirectly

The position of Spanish Delegation is of agreement with the change as we do not see a decrease of protection or less explanation about the issue defined.

As it is stated there will be a new draft, prior to further pronounce of the Spanish Delegation, we will have to see the draft.

15) Commented [A1]: New definition introduced in Art. 2

This comment is related to the deletion in Article 6:

From:

(a) to inform the National Committee, the Regional Committees and the data collectors such as accountancy offices of the applicable regulatory framework and to ensure proper implementation thereof;

To:

(a) to inform the National Committee, the Regional Committees and the data collectors of the applicable regulatory framework and to ensure proper implementation thereof;

The position of Spanish Delegation is of agreement with the change as we see, although accountancy offices are deleted, they are included in data collectors.

16) Commented [A2]: This provision will be redrafted completely

This comment is related to Article 7 where it is indicated there will be a rephrasing in:

(h) to make available the obtained results for providing advice and feedback to farmers on their sustainability performance.’.

As it is stated there will be a new draft, prior to further pronouncement of the Spanish Delegation, we will have to see the draft.
